

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Crl.Rev.Pet.No. 2603 of 2003()

CRA.178/2002 of ADDL.SESIONS COURT, KOTTAYAM
CC.202/1999 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM
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REVN. PETITIONER: APPELLANT/ACCUSED

SATHEESH KUMAR S/O. JANARDHANAN PILLAI
RESIDING AT SATHEESH BHAVAN, MANOOD KARA,
MADAPPALLY VILLAGE, NOW AT PRIYA VILLA,
NEAR PARAVOOR RAILWAY STATION, PARAVOOR VILLAGE,
KOLLAM DISTRICT

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SHRI. AMJAD ALI, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 21/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R.UDAYABHANU, J.

Crl.R.P. No. 2603 of 2003

Dated, this the 21st day of March, 2007

O R D E R

The revision petitioner stands convicted for the offence under Sections 420 and 471 IPC. The prosecution case is that the accused being an LD clerk attached to the District Police Office, Kottayam with intent to cheat the Adhyapaka co-operative Bank, Puthuppally, obtained loan for Rs. 1,400/- from the above institution on 21/01/1994 by producing a salary certificate with the forged signature of the Administrative Assistant of the District Police Office and misusing the seal of the District Police Office. The trial court convicted the revision petitioner for both the offences, charged under Secs. 468 and 420 IPC. The appellate Court acquitted the accused for the offence under Sec. 468 and convicted him for the offence under Sec. 471 IPC, for which he was not charge sheeted and also confirmed conviction under Sec. 420 I.P.C. It is the contention of the revision petitioner that the order of the appellate court by convicting him for the offence under Sec. 471, for which no charge was framed against him, is

liable to be struck down and that the offence under Sec. 420 is not established as the Co-operative Bank has not filed any complaint and PW2, the Senior Accountant of the Co-operative Bank has testified in the cross examination that the accused has remitted the loan amount.

2. It is seen that the impugned document was sent for opinion of the hand writing expert, who was examined as PW4. He has stated that on his examination vide Ext.P5 report, it could not be found that the document was signed by the accused. It is mentioned in Ext.P5 report that the signature in the impugned document is not that of PW8, the Administrative Assistant also. It is in the above circumstances that the appellate court acquitted the accused for the offence under Sec. 468 and also as the prosecution could not establish beyond reasonable doubt that it is the accused who forged the signature of PW8. The appellate court convicted the accused for the offence under Sec. 471. Being an equally serious offence as Sec. 468 the appellate Court was not empowered vide Sec. 222 Cr.P.C. to convict the accused for the offence under Sec. 471, the same being not a lesser

offence. Hence I find that the conviction for the offence under Sec. 471 is liable to be set aside. In so far as the offence under Sec. 420 is concerned also, in the absence of any complaint, it appears that the matter has not been properly adjudicated. It is seen from the evidence of PW2, the Senior Accountant of the Co-operative Bank that the loan amount of Rs. 1,400/- has been paid. In the light of the above evidence, I find that it could not be held that the prosecution has proved the commission of the offence of cheating. In the circumstance, the revision petition is allowed. The accused will stand acquitted.

(K.R.UDAYABHANU, JUDGE)

jg